



# Benton County Planning Board

## Public Hearing

### Technical Advisory Committee Meeting

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June 06, 2012

6:00 p.m.

Benton County Administration Building

215 East Central Avenue

Quorum Courtroom, 3rd Floor Suite 324

## Minutes

### PUBLIC HEARING

Meeting convened at 6:00pm

**Roll Call:** Present, Lane Gurel, Starr Leyva, Ken Knight, Mark Curtis, Jim Cole, John Pate and Ashley Tucker

**Disposition of Minutes from 05/16/2012:** Mark Curtis motioned to approve the minutes. Jim Cole seconded the motion. The minutes were unanimously approved.

**General Public Comment:** Chairman Gurel recognized Mr. Ashley Tucker a new Planning Board member and also recognized Mr. George Spence the County Attorney was with us tonight and also in our audience Mayor of Centerton Mr. Bill Edwards.

### **Old Business:**

**A. Downtown Towing, LSD, Project # 12-180—JP District 13, 21819 Meadow Wood Dr., Siloam Springs, AR, 72761**

**Represented by:** Jill and Jimmie Lewis (Owner) 21819 Meadow Wood Dr.  
Siloam Springs, AR, 72761

Member Ken Knight recused himself from this agenda item.

Staff presented their report stating that the previously submitted Landscape Plan for the site had been updated. Staff generated a proposed landscape buffer design which would block the sight line from the north and south at Meadow Wood Drive.. Mr. Ryan stated that staff superimposed a vegetative screen consisting of 12' arborvitae at the fence line surrounding the property. This proposed screen should effectively buffer the towing lot from both Meadow Wood Dr. and the adjacent property to the south. . One can obtain arborvitae up to 12' tall online at \$70.00 a unit. Locally, e arborvitae will cost about \$200 dollars apiece. Mr. Ryan noted that purchasing the buffer trees was not as expensive initially thought. . The applicant can possibly screen up to 12' tall for a thousand dollars. Staff did not show screening for the entire extent of the property. Staff did not have time to complete that aspect of the design. The

submitted landscape plan gives the Board and the applicant an example of the kind of screen that arborvitae can provide at a 12' height. The trees also grow up to 30 feet in height as they mature. Ms. McGetrick stated that they are fast growing trees. If the Board wishes to render a decision at this time, staff would recommend the following stipulations;

- A Stormwater mitigation plan obtained by the applicant.
- A landscape buffer be implemented by the applicant including but not limited to the planting of dense mature arbor vitiate (or similar evergreen plantings) of no less than 12' in height at initial planting, to be maintained in perpetuity by the applicant at no less than 15' in height as a dense screen.
- A perimeter fence 8' privacy fence or taller should be placed along the southwest property line in order to complement the proposed vegetative barrier.
- The hours of operation for the business restricted to Monday through Sunday from 6:00 a.m. to 11:00 p.m. not including holidays.
- That that applicant provides adequate measures to mitigate any contamination of storm water runoff similar to proposed staff measures.
- Staff recommends a defined timeline be developed by the Board in which all screening and nuisance mitigation measures are completed.

Chairman Gurel asked the applicants if they had any questions or comments concerning the staff report. Applicant Jill Lewis had no comments on the staff report, but stated she wanted to address particular statements made at the previous Public Hearing. Ms. Lewis stated that her business was described as a salvage yard or automotive graveyard. Yet, she felt that her business was strictly a wrecker service. She also informed the Board that the Junk Vehicle Ordinance (O-2004-33) shows that three or more inoperable vehicles at a time are classified as an automotive graveyard or salvage yard. MS. Lewis stated that she has an average of five inoperable vehicles per month and 85 percent of what is stored at the lot are impounds. Impounds are cars which were confiscated when a driver is driving without a license, or insurance, things of that nature and the vehicles function mechanically. Ms. Lewis looked at several businesses that have been approved by the Board and asked why this doesn't pertain to those businesses as well. These businesses include C2 Automotive, Deben Ash, R&D Salvage, 43 Collision Center, MPT Creek, and Roy Yeck which is a transmission shop as well as some businesses on Highway 16. The applicant stated that there are at least 14 other wrecker services operating within the county and claims that these ordinances do not seem to pertain to them. She stated that these businesses do not have any fences and that they have a total of 15 to 30 cars that are broken down and inoperable. Mr. Jimmie Lewis added that the applicants know this because they deliver vehicles to these businesses. Mr. Lewis continued that he has been in the wrecker business for five years and previously operated a lot on Highway 59 that had a chain link fence around it. Mr. Lewis did not have to have a Large Scale Development for that business. He informed the Board that he told the County this and he is wondering why this pertains to them now. Mr. Lewis stated that he believes the reason why is due to Mr. Ken Knight living in the neighborhood. Mr. Lewis was told several times that Ken Knight was on the Planning Board and that is the reason why they have to go through the Large Scale Development. Mr. Lewis also stated that they were told three or four times by the County that the Large scale development criteria did not pertain to his business due to the fact that they do not have any outbuildings, do not have a sign out by the road, and they do not have any

employees. Mr. Lewis stated that they ran the lot for a month back in December and were told by Mr. McKeehan that the Large Scale Development criteria didn't pertain to his business. He stated that Mr. Knight noticed and called the EPA and an environmentalist came out to inspect the towing lot site. He felt that Mr. Knight lied to the EPA by informing them that there was oil everywhere. Mr. Lewis continued by saying that he believed he had documentation of the EPA inspection.. Mr. Lewis stated that the environmental inspector could find no oil at the site. Mr. Lewis also stated that the [security] light was in place for four years and hadn't been a problem until they started keeping cars in the lot. Ms. Lewis stated that one of her biggest concerns was that they should try and comply to screen the property and when they try to comply with the screening the issue becomes "Well, you're a salvage yard." Ms. Lewis informed the Board that she had taken pictures of the properties of companies she felt were in violation. She passed these pictures out to the Planning Board for review.

Chairman Gurel asked the applicants if the pictures were labeled and if these companies were in unincorporated areas in the county. Mrs. Lewis stated that they were labeled and the sites were in unincorporated areas in the county.

Mr. Lewis stated that there are no covenants in their subdivision other than restricting uses to single-family homes and had there been any covenants preventing his business he would not have purchased the property there. Mr. Lewis added that they were not breaking any laws.

Chairman Gurel stated he wanted to see what questions the Board had. They would come back to the applicants for further comment later. Chairman Gurel asked if the salvage ordinance, currently in effect, applies to the applicant or not. He also asked how the project relates to other businesses that are existing in the county, what have they been allowed to do or not, or if they are approved, did they ever come through the Planning Board.

Mr. Lewis stated that C2 has come through the Planning Board and the Board granted them a Large Scale Development approval but there was never an issue of the Junk Vehicle ordinance and the parking of inoperable vehicles.

Mr. Christopher Ryan addressed Chairman Gurel and stated that the Planning Department has not had an opportunity to discuss these cases with the applicant. The Planning Department would have done completed reviews on these comparable projects and given the Board a complete report as to the status of those cases. Mr. Ryan stated that the only real way to address what the applicant is bringing up is to go back and research and unfortunately that would push this project and decision off a little bit further. Chairman Gurel stated he did not want to delay the status of the project either but that this was new information and that it is important to check into these items.

Mr. Lewis felt that if they fall into the salvage yard ordinance then every auto body shop would have to fall under that same ordinance.

Chairman Gurel asked for a copy of the ordinance so that he could clarify. Mrs. Lewis provided him with a copy. Chairman Gurel asked, "What it says in order to require all junk/salvage yards and all automobile graveyards located on state secondary highways, county roads or other

public roads, not regulated by state statute, to comply with county planning regulations before they are established or expansion to require that they be properly screened so as not to be visible from a neighbors premises or a traveled highway or roadway in Benton county. So this is what the ordinance is addressing, screening of businesses that again I am agreeing with you, they are calling junk yard, salvage yard, or auto graveyards and based on what you do, you wouldn't call your business any of these. But I have mine highlighted, if I can find it quickly here it says a salvage yard shall mean any establishment, residence or any place of business which is maintained and user operated for storing , keeping, dismantling , buying or selling of, either scrap or discarded junk or inoperable wrecked, discarded or dismantled motor vehicles, parts, machinery or appliances. I think it was under, let me find the part that applied, instead of reading the whole thing. So it is saying storing or keeping three or more inoperable wrecked vehicles."

Mr. Lewis stated they do not store, or keep three or more inoperable wrecked vehicles. Mrs. Lewis stated that they impound 85 percent of the vehicles. Chairman Gurel asked if there is ever a time when they would have three or more cars there that didn't run. Mr. Lewis stated they hadn't in five years. Mr. Lewis also stated that when this issue came up about four years ago, he told the County his lot was located on a stretch of County Highway 359 and leasing the lot at that time and it never was an issue. Mr. Lewis asked the Board why this didn't pertain to them then. Mrs. Lewis asked if she needed to write up every residence that has broken down vehicles, junk, and plastic in their yards and turn them in too. According to Ms. Lewis, that would include half of her neighbors and there is a \$250 fine up to \$500 for these violations.

Mr. Ryan stated that "There are two things that I think may be helpful to advance the discussion. Number one is you have a dense residential neighborhood here and I think the compatibility requirements in a neighborhood that is like that are going to be very unique compared to some of the more spread out areas that perhaps they may be talking about then again I don't know, we haven't had the opportunity to look at some of these other developments, but again the residential density ... probably not comparable. The other question is regardless of the applicability of the ordinance in which we're talking about right now, because of those compatibility issues, there is going to be a higher level of mitigation required... such that the screening that might be required for an automobile graveyard is probably still going to be the same kind of screening that the Board may wish for a relatively dense residential neighborhood regardless of other ordinances. So I think that we are still back to the same page here and regardless of these other cases which may or may not be valid things that our department has to look into, I still think that the questions raised by staff are still valid and I think the mitigation measures recommended by staff still have applicability."

Mr. Jim Cole asked the applicant if they would be able to accommodate the staff recommendations. Mr. Lewis stated that they could. Mr. Lewis also said they did not have a problem with planting the trees or putting up a privacy fence and they would be happy to do it.

Ms. Starr Leyva asked for clarification on the height and location of the privacy fence and also if there would be trees planted in front of the entry gate.

Chairman Gurel asked for clarification on the pictures regarding the houses and who they belonged to. He asked the staff if they felt that any of the neighbors would be able to see into the lot with the current placement of the trees. Ms. McGetrick stated there is a possibility that they may be able to see into the back of the lot. She stated that when she was on site it was hard to tell because it's summer and fully vegetated. She believed that during the winter months there may be a possibility that they may be able to see into the lot. She then stated that if you were to put this type of tree all along the back of the fence. She didn't believe that one would be able to see if it grew to 15'. Ms. McGetrick stated that even if all the vegetation was off the trees you wouldn't be able to see in.

Chairman Gurel asked Mr. Ryan if there was anything else from staff and would it be Mr. Ryan's recommendation on whether the separate salvage yard ordinance applies or not.

Mr. Ryan suggested that looking at other cases was not intended to suggest that the County should compromise or limit the review of this case. He said that the County is looking to be consistent and diligent in applying regulations and ensuring compatibility. He noted that more research into other cases would not be very use useful in applying to the current case but only to determine how lax prior review might have been. Mr. Ryan noted how each case is different and needs to be reviewed independently based on site characteristics. Mr. Ryan explained that staff provided a mitigation plan for all noted potential incompatibilities and other issues that is as good as it can reasonably be. He detailed mitigation measures for Stormwater, buffering and light.

Chairman Gurel noted that staff is recommending that regardless of the other salvage ordinance, or planning ordinance the planning regulations are addressing the same needs of the offsite nuisances. He asked about noise, hours of operation, and unloading of the vehicles and fluid leaks from the vehicles. She stated the hours between 8:00am and 8:00pm or 9:00pm or whatever the Board chose she would go with. Mrs. Lewis stated they would use the drip pans they purchased to slide under the vehicles to catch any leakage while it was left on the truck after hours. Mr. Cole asked the applicant what timeline she would need to get the trees ordered and planted. Mrs. Lewis stated two months would be sufficient.

Chairman Gurel asked the applicant if the trees would be planted in the drainage flow area, he was concerned the trees would fail to thrive in a swampy area and he wouldn't want the applicant to spend that money on the trees and then set them up to not do well.

Mr. Ashley Tucker asked the applicant if the arborvitae trees would be in conflict with the power lines. Ms. Lewis stated they would not.

Chairman Gurel opened up the Planning Board Meeting to Public Comment and explained that the Board would like to limit it to three minutes per person and for persons wishing to speak to raise their hands and one at a time step up to the podium and state their name and addresses.

As part of Public Comment Mr. William Scars of 21790 Meadow Wood Drive, Siloam Springs, AR., stated, "I'm kind of cater corner to his property. I would like to address you on this. He said that the neighbor put up the fence free of charge across the street. He paid for that fence so he

wouldn't have to look at what was across the street. That's why he paid for the fence. Also he said that all cars are drivable that he tows in. He's had 13 cars in there that were totally burned that you could not drive. Also, if we ever have one of those ten year floods his fence, his trees, all that's going to back up like a dam to the neighbors across the street. It's totally going to flood them out if we ever have a ten year flood which we have had before. This is a nice subdivision all of our homes are beautiful out there we don't need his junk yard out there, it's just inappropriate, he could move that anywhere out and it would be fine. There are plenty of places he could move his yard, not in a nice subdivision, our houses are beautiful out there, we paid a lot of money for them that's our whole life, tied up in those houses. We don't want his business up there. Thank you."

Susanne Hernandez of 21787 Meadow Wood Drive, Siloam Springs, AR. 72761 stated "I made Public Comment back in April. I kept thinking it would be finished, but it isn't, so I am just coming back to say this is a residential area. We have lived there for 28 years, there are other individuals that have their private business but they don't keep vehicles' or other things that are there. So it's not quite the same business to business area, the light has always been an issue, the noise has always been an issue, I personally didn't know who to contact. The key thing is, it's a residential. Now I hope that you will take a look at that because there are many homes that are very well established and towing wrecked cars does not need to be in a subdivision that is designated as residential. Thank you."

Ken Emmerick of 22059 Meadow Wood, Siloam Springs, stated, "My name is Ken and I live at 2209 Meadow Wood, it's a street away. The thing that mainly concerns me is that right now if this is all done it would probably look nice for a while. But whether it was maintained I don't know what recourse we have on that and then down the road what it's going to do to property values with the long term. I don't want to have to police this. If there are wrecked vehicles that do sit there for a while and they did very much misrepresent themselves' to the fact that there was one vehicle that was burnt out, it was a truck that was clearly a roll over. There was a number of vehicles that wasn't drivable, I have not seen anywhere near 85 percent. So I'm just concerned about the long term indications of that and how we would police that and what our options are. I don't think it belongs in the neighborhood; we all have about two acres. I just don't think it belongs there."

Ken Knight of 17492 Ridgeway Meadow Wood, Siloam Springs, AR. stated "I want to clear up a few things; One from a good planning perspective, and I've been in the planning business a long time not only here but also in Siloam Springs, you don't put a business that has damaged and derelict vehicles, even though it may be for a short time, and I have seen them there for a long time, in a residential area. I go back to the burned out cars and a bunch of other things, so you got that issue. The other issue, there are 30 plus homes back there, some inexpensive and some that are very, very, expensive. When you drive into this subdivision and you look down and you see that sitting at the bottom of the hill and you're out there to look at a house, right off the top you're going to degrade the value of that house and it has degraded the value of houses. The neighbors across the street who donated the fence so they didn't have to look at what was over there, tried to sell their house. They lived there before these folks moved in. They lived there and after they moved in and they said we can't deal with it we want to sell our house. The realtor says you're not going to get any money out of this house with this thing

across the street. So they have chosen not to sell their home. The other issue, Mr. Lewis said that I called the state and said I saw oil on the ground, I called the state and said there are wrecked vehicles being stored there that have the potential of putting oil, gasoline, antifreeze other things dripping from this and there is a lot of water that moves through here and it would get picked up. I did not see anything on the ground, OK, but from a planning standpoint you can't take a business like this and put it into the middle of an established neighborhood. If they came in first and did that and I chose to move there that's my problem if the people who already live there get put upon about the me now it's mine, I'm going to do whatever I damn well want to do then that is a problem and that's the reason I even raise the issue of what's going on its not good planning thank you."

Anthony Wind of 1800 Ridgeway Lane, Siloam Springs, AR stated, "I live really across the street of the site of the Lewis'. I share about 300' of property line with them. I've heard a lot here tonight, and I'm not really concerned about the other properties throughout the county... that's something for somebody else to take care of. I am not concerned with how Mr. Lewis spends his money... that's his money; he can do with it whatever as he wishes. What I am concerned about is the effect on the neighborhood. It seems to me the perception is that he doesn't give two hoots about the neighborhood. At the last meeting one of the gentlemen that was sitting over here on the Board mentioned that it is the responsibility of this group here to maintain as near as is possible the character of a community. Meadow Wood is a community, a residential community. What Mr. Lewis is proposing is a large scale commercial endeavor. Thank you."

Haley Emmerick of 22059 Meadow Wood, Siloam Springs, AR stated "I want to start off by saying I know the Lewis's and I feel awful that this is taking a personal stance in our neighborhood. I can tell that our neighbors are upset. I can tell the Lewis's are very fervent about this. This is their business they are taking it personally and I hate that for them and I just want to say I think the neighbors feel you guys are being inconsiderate but you guys feel we are being inconsiderate because it's your business. It's your livelihood and I hate that and I only came because I care about the neighborhood. Ok, I'm worried about our property values but I do want to say that I'm hoping that our neighborhood and the people in our neighborhood would be willing to help you guys find a location that fits your budget and something that fits the community that works for everyone in the neighborhood and helps your business. I'm willing to help you. I just don't want it to hurt my property value because of the business and I hope you understand that it's not personal."

Chairman Gurel asked the applicants if there was anything else they wanted to add before the Board takes action.

Ms. Lewis, "First of all its not that we are trying to be inconsiderate of anybody, by planting these trees I don't believe that you will be able to see in there, I have talked to several realtors one works for Connection Reality. And first of all the neighbors across the street, we moved in before they did.

Mr. Lewis, "We looked at buying that house before we bought the one so he is dead wrong."

Ms. Lewis, "And we tried to buy the fence and it I was given to us, that is neither here or there it really doesn't matter the thing to me by us going through this all. All we are trying to do is run our business, raise our kids, put as much money into our kids as possible, us having to go out and rent a place and pay all this money out is outrageous when we have all this land and we are more than willing to plant trees so you don't see it and the people we have talked to said that for one the house that we just got through building more than raises the property value even if it did go back. We keep our place nice, we keep everything nice, and I don't have tons of cars in there like my deal says. We average 5.75 and sometimes yes there will be a few more in there and sometimes there won't be any it's how the business goes you don't know. But if we plant all these trees and maintain them how is anybody even going to know what's in there because there is no sign, we don't put a sign up, the only thing that was there is a no trespassing sign"

Mr. Lewis, "The burnt vehicle is an inoperable vehicle. We didn't say there never was, yes there is but we don't have bunches of them that pull up and as soon as we can we get them out of there; we don't want them there anymore. It takes up space; I want to use just the one part of the lot which is right behind the fence, what we have always used. We don't want to use the back side it's all used for turning around. We are not asking for something that we want to store 10, 15 or 20 cars and just leave them sit It's not the case. I think like it was stated earlier you have to look at each individual deal and that's what we are asking for yes, we want to put a few in there at times and we want to get them out of there as quickly as possible, sometimes we do have to sit on them a little while, sometimes we can get rid of them the next day it just depends."

Mr. Lewis. "Getting back to the neighbors who wants to sell it just shows you his credibility, we wasn't using that lot for about three years so if they wanted to sell in that time frame they could have sold it." Mrs. Lewis, "And they knew we were going to put our cars back in there."

Mr. Lewis, "There wasn't nothing in there, it's no difference than a privacy fence around my swimming pool It's just another lie, bottom line there wasn't no covenants when we moved in there, other than a single family home, if they want to talk about property value, I got over 300 thousand just in my home alone which is worth more than probably any of their property so I'm not decreasing the value of anybody's property by the lot." Mrs. Lewis, "and we're not wanting to, we are not wanting to decrease the value of ours or anything else, and especially by putting up all the trees you're not going to see it. And you won't know what it is."

Chairman Gurel asked what action the Board would like to see at this time.

Mr. Mark Curtis motioned to approve the large scale Development Plan with the stipulations staff recommends.

- A storm water mitigation plan obtained by the applicant
- A landscape buffer be implemented by the applicant including but not limited to the planting of dense mature arbor vitate (or similar evergreen plantings) of no less than 12' in height at initial planting, to be maintained in perpetuity by the applicant at no less than 15' in height as a dense screen.
- A perimeter fence 8 ft. privacy fence or taller should be placed along the southwest property line, in order to complement the proposed vegetative barrier.



- The hours of operation for the business are restricted to M-Su from 6:00 a.m. to 11:00 p.m. not including holidays.
- That that applicant provides adequate measures to mitigate any contamination of storm water runoff similar to proposed staff measures.
- Staff recommends a defined timeline be developed by the Board in which all screening and nuisance mitigation measures are completed. (The time frame is two months)

Mr. Cole seconded the motion. Motion was denied 1-6-0. The project was not approved for that location.

#### 6. New Business:

- A. **Greenstone Estates, Project Final Plat # 11-145, JP District 10, Hwy 72 W., Bentonville, AR, 72712.** (Applicant has requested this project be tabled until the June 20<sup>th</sup> Planning Board Meeting)
- B. **Night Hawk Custom Training, LSD, Project # 12-187, JP District 9, 2106 W. Centerton Blvd., Centerton, AR, 72719**

**Represented by:** Jon Hodoway of, 100 John Lane, Rogers; AR, Ken Swank (Property Owner) 551 Woods Lane, Centerton Arkansas.

Staff presented their report and stated that staff has no comment on the validity of the waiver requested by the applicant. Mr. Hodoway requested a waiver of the \$300 application fee. The waiver request was updated to provide a justification as follows: "Night Hawk Custom Training Academy requests a fee waiver based on our ongoing service offered to local law enforcement this would include but not limited to Benton County SWAT, Centerton Police Department, and Springdale Police Department." Staff recommends that the Board consider the information provided by the applicant so far and determine whether this is sufficient to make a decision on the project or whether it requires further analysis. Staff recommend, at a minimum, the following stipulations be considered:

- The applicant amends the site plan as per staff comments noted above
- The applicant stabilizes and hydro seeds the bare soil berms
- The applicant considers a dawn to dusk restriction on hours of operation
- That the applicant provides a specific reference document that supports their lead claims
- The applicant provides a letter from the appropriate public safety agencies in regard to access to the property for emergency services
- The applicant provides a management plan for solid waste indicating how and when barrels are serviced
- The applicant submits a letter from the Health Department in support of the sanitation plan.

Mr. Jon Hodoway informed the Board that he would get the necessary information in to the Planning Department. He also had some additional information that related to the construction of the berms and provided a lead removal plan to the Board. Mr. Hodoway spoke to the number of porta potties

stating that two is their standard, for one male and one female, but he would be willing to put whatever amount was necessary in.

Chairman Gurel asked for clarification on the name, whether it was Night Hawk or Black Hawk. Mr. Hodoway clarified the name as Night Hawk.

Mr. Hodoway stated he had experts in the audience willing to speak to the safety questions and the use of the range by Law Enforcement. Chairman Gurel informed Mr. Hodoway that when the discussion gets to the appropriate point he may call experts to address those topics.

Mr. Hodoway informed the Board that there seemed to be some disconnect between what he has been told by ADEQ and what mitigation needs to be done for drainage. He said that ADEQ has indicated to him clearly that he has sufficient area for the watershed to avoid any runoff. Also he is in contact with the Bentonville Fire Marshal and will provide a statement in regard to access to the property for emergency services.

Mr. Ken Knight asked the applicant his reason for opening the gun range. Mr. Hodoway explained that there is a big demand for it and that he has a narrow specialized range of services that he offers. He also offers use of the range to Law Enforcement at no charge. Mr. Knight inquired about brass removal mitigation. Mr. Hodoway explained that he has a reloader company on retainer which gathers the expelled and used brass. Mr. Knight asked the applicant to describe a shooting event. Mr. Hodoway explained the way an event would work as follow; a group of people under a particular body, an example would be the IDPA, would like to hold an event at a given time. All of the people who come to that event will be members of an organization meaning that they have demonstrated their proficiency with a gun they have competed with in other events, so they are ranked competitors and that they would hold that event and they would charge admission fee to those people and then a portion of that admission fee would go to expenses and he would get a nominal portion of that for the use of the facilities.

Ms. Starr Leyva asked the applicant for clarification concerning novice shooters, people qualifying and activities for people who have no shooting experience. Mr. Hodoway explained they teach the concealed carry class, introduction to handgun class, and spoke of the strict safety rules they use.

Mrs. Leyva asked the applicant, how the other emergency services such as contracted ambulances and the police department get on to the property in order to respond in case of an emergency. The applicant spoke with the Bentonville Fire Marshall having the gate code to get in if needed. Mr. Hodoway explained that he was told by the Fire Marshal that EMS only responds with an ambulance from Bentonville and an ambulance helicopter can be sent in the event of an emergency. Mrs. Leyva asked for clarification as to the location of the landing pad.

The Board members asked the applicant to speak about a noise mitigation plan. The applicant described the earthen berms, vegetation, and building which absorb sound. He also described his decibel meter reading samples of the noise level and stated that the trucks on the highway, surrounding industrial buildings, and the airport with planes taking were louder than the range. The applicant stated that he struggles with the lack of a standard for noise levels and he spoke at length on the different flavors of noise.

Mr. Tucker asked the applicant who controls the property to the north and east of the property whether or not it was the same person who leases the range property to him. Mr. Hodoway answered it was not the same person who leases him the property.

Mr. Tucker asked the applicant if a design consultant was hired to design the range. Mr. Hodoway explained they did not hire a consultant but did use the NRA guidelines and the Department of Energy Guidelines. Mr. Tucker asked the applicant for a copy of the NRA guidelines; Mr. Hodoway did have a copy of the Department of Energy guidelines with him but did not have the NRA Source Book with him. Mr. Tucker asked the applicant to speak regarding the NRA, DOE guidelines regarding the fire safety zone, ricochet zones, and a designated over travel. Mr. Hodoway described that in the NRA and the DOE where they talk about a finger or an eyebrow he has elected to use an earthen berm. When you look at the height of his berm it is the entire recommended height with earthen berm rather than using earthen berm and using a secondary material over that. Mr. Hodoway explained he was trying to balance these two things off in the lead mitigation plan. At some point the lead is going to need to be taken out of the soil typically either the eyebrows or the fingers cause all kinds of problems with getting equipment in and out of there so he has elected to put earthen berms all the way up for the height. Mr. Tucker stated that they have a specific table and guideline for open berms as well. Mr. Hodoway stated it is 16 feet above the range surface acceptable for range what is acceptable for ranges are 50 yards along or less. Mr. Tucker spoke to the NRA criteria of the area behind the berm specifically for how long that should be and that it is based on the largest caliber fire arm that is shot. Mr. Tucker also asked the applicant about the largest caliber shot which will be allowed on the range. Mr. Hodoway stated civilians can only shoot handguns and that the rifles are 22's.. He has allowed the police to shoot 556 sig within the berms.

Mr. Tucker asked the applicant if he was in business before 2005. Mr. Hodoway stated yes also that Mr. Swank has operated a shooting range there for his own use and the use of his friends and prior to that.

Mr. Tucker asked the applicant if he had a designated elevated range observation platform. Mr. Hodoway stated that when you talk about a designated elevated range observation platform that implies that they have a line or groups of unsupervised people. In reality his range has a safety officer who would be standing to the left of you and he would observe every shot fired from this distance. No one would be firing that did not have someone able to reach out and stop you from shooting so that is why he doesn't have an elevated platform. Mr. Tucker stated yes but that usually the elevated range platform is not so much for shooting but everyone else at the range so that they control not just the individual but they control all the other operators at the range. Mr. Tucker asked the applicant if he had a specific person or Range Master who all of the other range masters are subordinate to and listen for signal from that individual to stop all shooting. Mr. Hodoway stated yes he has for each event a Match Director, an Assistant Match Director, Safety Officers, and a Chief Range Officer in each bay.

Mr. John Pate expressed concern regarding noise abatement, particularity for the neighbors and asked the applicant to speak to that. Mr. Hodoway stated that one flavor of noise is much more of a nuisance than another, depending on the person.. He stated that he didn't know how to speak to flavor of noise and the decibels is the only way he knows how to measure. Mr. Hodoway stated that the County and the City of Centerton do not have a noise ordinance. Chairman Gurel stated that

nuisances are defined in the Planning Board Regulations and that the responsibility of the Board had to do with nuisances that leave the site of the property. It is the Board's responsibility to see that noise is confined to the property and cannot compare the noise from airplanes or trucks going down the road as the Board did not have authority over that. Chairman Gurel clarified that his comments do not suggest that the proposed business is generating too much noise or that it is something that requires mitigation only that the Board is looking at the noise as it pertains to the gunfire associated with the applicants' desired use of the property.

Mrs. Leyva asked the applicant if he had a contract with the portable toilet company that he routinely uses. The applicant explained that he had a monthly agreement.

Mrs. Leyva asked the applicant how many shooting stations were at the range and whether they were permanent or portable stations. Mr. Hodoway stated he has four berms and two more that need to be completed. Mr. Cole asked the applicant if the submitted site plan shows the height of the berms. Mr. Hodoway stated that he could add that to the site plan.

Mr. Knight asked for clarification on the types of rifles used at the gun range. Mr. Hodoway stated that 22 rim fire rifles were used. Police officers were allowed to shoot M4 Carbine and 556 sig. Mr. Knight asked the applicant if a hunting group would be able to come out and site their 30-06. Mr. Hodoway stated that it was not allowed. Mr. Knight asked the applicant what calibers of guns are used at the range. Mr. Hodoway stated the biggest majority are 9mm, 45's and 40's.

Chairman Gurel asked for clarification concerning no pass zones. The applicant stated they have designated zones for events which you do not cross unless you are the designated shooter. A shooter must be supervised and briefed to cross the no pass zone.

Chairman Gurel asked the applicant if the two letters provided by the applicant were speaking specifically to the applicants' gun range. Mr. Hodoway explained that the email letter was simply referring to lead mitigation and the misapplication of science. The second letter from Asada Ebb is specific to Night Hawk Custom Training Academy. Chairman Gurel asked for these letters to be signed and validated.

Chairman Gurel asked the board for any comments regarding the applicants request to the fee waiver. Mr. Knight asked if there was a hardship. Chairman Gurel explained that the fee waiver was supposed to be based on hardship and as long as it is not financial. The request is being made to waive the fee because a service is being provided to Law Enforcement. Mr. Mark Curtis explained in the past when they discussed the fee waiver other ranges have had public service groups in too, but have still charged. Mr. Curtis's vote would be to not waive the fee.

Chairman Gurel allowed the guests of Mr. Hodoway to speak to the Board regarding safety issues and the use of the gun range.

Sergeant Thomas See with the Benton County Sheriff's Office, 1300 SW 14th Street Bentonville, AR. Mr. See stated that he is a Team Leader for the Benton County SWAT Team and they have utilized Night Hawk Custom Training Academy Range on a couple of their training days due to the fact that the County range was in use as was the Arkansas Law Enforcement Training Academy. Mr. See stated that

the Night Hawk range has met the requirements that they and the Academy Range in Springdale utilize. He stated that he felt the berms were adequate, and that the medical safety features and the fundamentals of Rim Fire Safety were in place. Mr. See explained that there are times that they cannot use their own range due to events going on there and rather than scrap their Fire Arms training they use the Night Hawk Range as that training is not something to be put by the wayside. Mr. Curtis asked Mr. See to make a comment on the area beyond the berm that was discussed earlier in the meeting. Mr. See explained that when he was out there looking he did not see any residences that were within a distance that if a bullet were to travel through the berm by chance that it would hit the house.

Lieutenant Scott Lewis with the Springdale Police Department stated that he is a firearms Instructor for the Police Department, a twelve year member of SWAT, and a Marine. He is also a competitive shooter in addition to law enforcement and has traveled to different ranges all over the country. Mr. Lewis felt Night Hawk was one of the better ranges he has experienced. He stated that Mr. Hodoway is meticulous about safety briefings and pointed out some specifics as to competitive shooting, "As a competitive shooter when you show up for IDPA no one who is walking around is loaded. No one has a loaded gun on their person. The only time when they load is, when their name is called, they go to the firing line and the safety officer is standing behind him and says do you understand the course of fire and they say "yes" he says "face down range, load make ready" and then the buzzer goes off and they shoot their firearm. Before they leave he says, "Show clear." So they have to show the Safety Officer that the weapon is safe, empty, devoid of all ammunition, and they holster it. The shooters who pay their own money and spend their own time to be there don't want to violate these rules. One, if they violate that rule and they get caught with a loaded gun behind the firing line they are going to get thrown out, lose their money, besides being humiliated and asked to leave the range. So it's huge that the only person loaded is on the firing line. Same with the CHL classes. I am the CHL instructor for Night Hawk; we have two shooters on the line at a time. It doesn't matter if we have ten people in a class or 30 people in class we only allow two shooters at a time. Exact same scenario we actually have a table set up, the people put their gun and ammo on a table. I tell them "load make ready" they shoot six rounds they set the gun down and we load them up and shoot six more. The guns are empty when they walk up and empty when they leave."

Mr. Tucker asked Mr. Lewis if they are using paper targets or steel targets. Mr. Lewis and Mr. Hodoway stated they use paper. Mr. Hodoway stated he may have needs in the future for steel but not at the current time.

Mr. Kevin Buck of 97 North Pine, Gentry, Arkansas stated he is the NRA Counselor and Chief Range Safety Officer for Night Hawk Training Academy. He is certified to teach a number of things with the NRA and wanted to address one of the questions about a tower. Mr. Buck passed out sheets from the NRA Manual. He explained that if they are set up on a line which has multiple shooters they would have the Chief Range Safety Officer which is himself, then he would have a ratio of 1 to 4 and 1 to 5 fire RO's which are people that have been trained. He stated that, "They work with the shooter on the line and that's where there is no need to have a tower or anything." Mr. Buck teaches the RO Class. He stated, "It is a nine hour class. They take a test; do inspections of the ranges as needed and everything indoor or outdoor." Mr. Buck stated that he is qualified to teach basic pistol instruction, personal protection in the home, security assessments of homes, families, women only classes, and Boy Scouts.

Chairman Gurel stated that he would like to stipulate that approval be based on a certain type of group of firearms and that he felt that the Board has a choice to bring in a consultant to study the claims on safety and make a recommendation to the Board. He didn't think anyone who sits on the Board is qualified to make a judgment on the safety claims that are being made. Mr. Knight stated that what he has heard and the quality of the police officers involved and their comments he would rest on their reputation and not require a consultant to come in. Mr. Ryan stated that was a reasonable alternative provided the County Attorney feels that is appropriate. Mr. George Spence stated, "I guess I'm fine with you doing that, I'm not inclined to recommend that you bring in a safety consultant to pursue this. The ultimate liability here, if there was any, would be with the owner of the range. We have got a responsibility to go through our rules and follow our rules. If we are doing that, then I think we are fine. So I don't know that anything more than that is necessary." Mr. Gurel stated that all projects are approved based on the representations made by the applicant. But due to the nature of this project he believed that the Board should have a stipulation that an approval should note the representations made by the applicant. "George Spence stated, "This body is not a guarantor of safety we are here to do planning. It's not that safety isn't an appropriate consideration to be made in regard to planning. But the ultimate guarantee of safety or the ultimate one considered that is the property owner. I'm sure I have heard of a lot of description of that and that they have done that and I'm sure that there are a lot of insurers who have made a consideration of that, so I think we just need to lend ourselves to the planning extent that there needs to be some consideration of safety in relation to planning, something to talk about, but beyond that I don't see any reason for this Board to go down that route." Mr. Hodoway stated that his range will not operate any weapons that exceed the safe operational capacity of the facility.

Ms. Leyva commented on the site plan lacking water lines and septic system detail. She was concerned that a helicopter landing pad or parking lot might be installed on top of septic system or a well. Mr. Hodoway explained there are two areas for parking. One that is up by the storage buildings has already been through large scale development. It's a gravel grass area right off the asphalt which has adequate parking. The second one is also a gravel grassy area in front of what was going to be a storage building facility. It is built on a pad to support the traffic.. He stated that he understood these needed to be noted on the site plan.

Chairman Gurel asked the applicant to state a limitation on what kind of firearms would be used at the range. Mr. Hodoway explained that he did not feel there were unsafe guns but felt that there is unsafe behavior and deferred to his law enforcement experts. Law enforcement felt there didn't need to be a limit. Mr. Hodoway stated he has zero plans involved to have anyone shooting rifles but law enforcement and law enforcement events that's not part of his model, his primary focus. It is the law enforcement training that is shooting the rifles out there except for 22 Rim Fire. It's not core to what he wants to do but at some time he wants to be able to offer the flexibility to do things that they want to do safely. Mr. Tucker asked Mr. See if they are shooting high powered rifles from a distance greater than outside the berm. Mr. See stated they are operating with their side arms and are staying within the confines of the berm.

**Public Comment:** The public comments focused on safety and noise nuisances. Residents and property owners in the surrounding area felt that the noise level and type would create a nuisance which could not be mitigated by defined hours of operation. Residents and property owners also felt that the level

of safety precautions suggested by the applicant would not acceptable to mitigate doubts about personal safety for surrounding properties. Specific comments are as follows:

Mr. Bill Edwards, Mayor of the City of Centerton, stated that his number one concern is to make sure that the surrounding land owners and our citizens are safe. He visited the gun range and felt it was a nice facility. Centerton has an eleven person Police Department in which they have to qualify twice a year and it is sometimes difficult to get them scheduled for range time so it is nice to have Night Hawk Training Academy nearby. Centerton does not have a noise ordinance. He has had three people come to him with noise complaints. Mr. Edwards stated he invited them to the Planning Board Meeting so that they could speak. Mr. Edwards stated that the City of Centerton has no intention of Annexing the Night Hawk site.

Mr. Darryl Wieland, of 11595 Oak Hills, Bentonville, owner of Eagle Industrial Park, stated that his business was located to the west of the shooting range. Mr. Wieland expressed his concern about the loss of revenue due to the noise coming from the range. He was concerned about the safety of the tenants of his buildings. He stated that he has had also experienced situations with range patrons attempting to access the range from his property. Mr. Wieland stated that the storm water runoff may cause lead to leach out of the berms onto his property and eventually into Spavinaw Creek.

Gary Hawks, of 9475 North Tycoon Road, in Centerton lives southwest of the gun range by about 700 yards. Mr. Hawks spoke to the noise issue. He stated that if he was outside on his property he heard continuous gun shots. He stated he believed that it was not just handguns. He stated that he believed assault rifles were being used. Mr. Hawks said he could hear repeated shooting until evening. He stated he got no reprieve and felt harassed by the noise. Mr. Hawk spoke about his concerns for safety.

Kathy Schagle, of 2210 Kenyon Road stated that she is concerned with the safety of her grandchildren in place. Ms. Schagle stated she could hear commands and conversations from the range from her front porch. Mr. Tucker asked Mrs. Schagle when she noticed the noise being a problem. Mrs. Schagle stated "It began about a year ago but again Mr. Swank with the berm I thought it was just for him to use for him to shoot and then it progressively got worse. We kind of watched it get worse. As Mr. Hawkes said there are a lot of high powered weapons being shot." Mr. Curtis asked Mrs. Schagle to clarify which house she lives in on the map. Mrs. Schagle stated she lived in the red brick house which was off the picture to the top directly north.

Ken Schlagel of 2210 Kenyan Road stated that his front porch faced directly into the clay berm at the north of the Night Hawk site. Mr. Schagle informed the board that a year ago last summer he had a round go through his yard and it went right by and over the top of the swimming pool. He is concerned for his family's safety. Mr. Schagle stated that if he ever wanted to sell his property he would not be able to sell as no one would want to build on the land with the gun range there. Mr. Schagle also felt the noise was a nuisance,

Bob Erickson said he has thirty acres in and around 1218 west Centerton Blvd. He lives at 11301 Penbrook Circle in Bentonville, Arkansas. Mr. Erickson stated that if the shooting range is allowed to be there it would stop the growth of Centerton business going to the west. Mr. Erickson said that the noise was also a nuisance. Mr. Erickson informed the Board that he is concerned with the grade school children hearing the gun shots. Mr. Erickson stated that this was a bad sort of business near a town.

Phil Lee of 801 SW O St., Bentonville, Arkansas said that he has been a property owner on Zeba Street for the last 20 years. Mr. Lee stated that this amenity is probably needed in Benton County but does not believe this is the right location for it.

Erin Carter is the owner Partridge RV and Diesel Centerton Eagle Industrial Park. He said that his business is located next door to the shooting range. Mr. Carter recalled an instance when he called Officer Ron Yosey out of Centerton Police Department to come to his facility to investigate two twelve gauge shells which landed on his. Mr. Carter was concerned about safety.

Jim Milligan of 59 County Road, Centerton, Arkansas, operates a business located 600 yards NE of the range. He stated "I moved my business out there in 2004 with about six or seven employees. We are up to seventeen now and the noise that is being described to me is nothing like a .22 I have owned. I have shot a .22 and I am hearing fully automatic weapons. I'm not talking semi-automatic; I'm talking about fully automatic weapons where you would have to have 50 people out there shooting at the same time to hear the sounds that I am hearing from over there in the last 30 days. I'm not talking about over 30 days ago or I might have forgot about attending this meeting, I heard it recently very recently and I would just hope before you would turn down a towing operation in your neighborhood, that you think about that before you put a gun range in mine."

Billy Curtis of 9790 Highway 279 N., lives just west of the property right off Hwy. 279 on the east side of the road. Mr. Billy Curtis stated where he is located he doesn't pay attention to the noise and it doesn't bother him and he is out working in his yard all the time. Mr. Billy Curtis stated he was impressed with the berms.

Chairman Gurel announced a ten minute break, to reconvene at 9:25.

Chairman Gurel asked the applicant if there any last comments to make in response to any of the Public Comment.

Mr. Hodoway stated he wanted to address a couple of points regarding people coming in and what condition they brought their guns in. He said that people are allowed to bring the gun in encased in a case and not allowed to handle it until under supervision. The second point is; he asserted that he is accountable for things but cannot be accountable for the round that was fired last summer into the swimming pool since it was prior to him opening. Mr. Hodoway stated that. Lieutenant Lewis had a point that he would like for him to make about the number of people out there walking around every day with a gun legally in Arkansas.

Lieutenant Lewis stated that, "There are over 300,000 people in the state of Arkansas with concealed handgun licenses that you are rubbing elbows with every day when you walk into Walmart or wherever it is. They obviously have far less training than the people who show up to do the training including law enforcement, military, or competitive shooters.. You're probably more likely to get shot like that somewhere else than you would be at the range."



Mr. Cole informed the applicant that the Board has talked about noise in Public Hearing Meeting and TAC but much of the public comment was about noise and did the applicant want to address any of that portion of the comment.

Mr. Hodoway wanted to focus on how far sound can travel and the “flavor of noise” noting that there is some we like and some we don’t like.” He noted the industrial nature of the area which includes the cement plant, diesel machines, asphalt plant plus the ambient noise from the highway and airplanes. Mr. Hodoway said that he would be willing to limit hour and make other concessions but that it is a industrial area. But he said he would be willing to discuss mitigation with the neighbors.

Mr. Curtis asked the applicant to comment on the shooting hours that the neighbors noted.

Mr. Hodoway stated, “I can tell you some facts I’m responsible for. I can tell you that the 22’s that the Apple Seed project shot. If you want to check their hours they have a sign in sheet that says they don’t start until 9 o’clock. They only load five rounds into a magazine. Those five rounds are expended and then they go on to something else which is an intermediate drill that teaches loading. They have classroom in that portion there is definitely not shooting and that is our probably longest most intensive shooting”

Ms. Leyva asked a clarification question concerning how long Night Hawk has been open. She recalled Mr. Hodoway said 2007 but wanted to know how long he has been operating in this location. Mr. Hodoway stated he began leasing the property from Mr. Swank in October of last year.

Mr. Knight asked if additional vegetation like Conifer trees mitigate sound. Mr. Hodoway answered they actually have trees behind the berm right now. Mr. Knight stated that those trees “ are small and scattered with no leaves in the winter.” Mr. Hodoway stated he was not sure if additional trees would help the sound. Chairman Gurel asked the applicant if a berm around the perimeter of the property would mitigate any of the sound. Mr. Swank stated there wouldn’t be any room to put in a berm. Mr. Hodoway stated the berms have fully lined trees and there is a building facing that way. There is an opening but the bulk of it is trees and building that are obscuring the noise.

Mr. Knight asked the Mayor of Centerton if Centerton expands to the West is there any intention by Centerton to annex this property or is this going to become an enclave in and of itself.

Mr. Mayor “I’m sure if we grow that way yes there’s several pieces of the County in Centerton that go out in that direction.” Mr. Knight asked if the property owner does not have to petition to be annexed or does the City could just annex them. Mr. Mayor “If it was so desired. At this time the City of Centerton has no intentions to do so.” Mr. Knight said interpreted this to mean Centerton, would be annexing the gun range into your town.

Mrs. Leyva asked the applicant if he is supplied water by the City of Centerton or if he has a well. Mr. Hodoway stated they are not supplied by the City of Centerton. There is no water on the gun range they bring in their own water to drink. He would get the site plan corrected to show where the utilities, water and septic are.

Mr. Curtis asked the applicant about operating hours. Board members agreed to limit hours from 8:00 am to 6:00pm.

Mr. Curtis motioned to approve the project with the following stipulations;

- The applicant amends the site plan as per staff comments noted above.
- The applicant stabilizes and hydro seeds the bare soil berms (with 90 day time frame).
- The applicant considers a dawn to dusk restriction on hours of operation (8:00am to 6:00pm).
- That the applicant provides a specific reference document that supports their lead claims.
- The applicant provides a letter from the appropriate public safety agencies in regard to access to the property for emergency services.
- The applicant provides a management plan for solid waste indicating how and when barrels are serviced.
- The applicant submits a letter from the Health Department in support of the sanitation plan.
- Size of the caliber we will not use any weapons that will exceed the safe operations of the facility.
- Letters from consultants to be signed.
- Applicant to follow whatever requirements the Health Department has and required permits.

Mr. Knight seconded the motion. The motion failed to pass 3-4-0

**C. Advanced Builders, LSD, Project #12-188, JP District 1, 15760 HWY 12 E, Rogers, AR, 72757**

Represented by: David Platz (Surveyor) with WR Consulting and Tom Weishman (Owner) #1 Deerhurst

Staff presented their report and stated the applicant has requested two (2) waivers. The applicant has requested a waiver from the parking buffer requirements. The applicant has requested a waiver for three (3) required parking spaces. Staff recommends that the Board consider the information provided by the applicant so far and determine whether this is sufficient to make a decision on the project or whether it requires further analysis. Should the Board wish to make a decision at this time, staff recommends at minimum the following stipulations: The applicant shall submit approval from the Health Department for use of the current septic system or an alternative acceptable to the Health Department. The applicant revises the submitted site plan and tract split sheet by adding signature lines for notary and property owner. The applicant shall deed an access easement to Hwy 12, for Tract A from Tract B.

Chairman Gurel asked staff for clarification of the yellow lines on the GIS Map and whether the building was in the property line or outside the property line. Ms. McGetrick clarified that the building they are going to take down and replace is within the property lines.

Mr. Platz explained the difference; they had the 4000 sq. ft. building and they intended to cut that down to 50 for the purpose of giving room for the alternative area. The main reason for that change, cutting the 250, was to give them a little more room. Mr. Platz apologized for not having the approval from the Health Department. He had spoken with Mrs. Eastman and they are working on it.

Mrs. Starr Leyva stated that it was turned in late on Monday and that they were going to try to get to it to the best of their ability on Tuesday and that there was some paper work issue, turnaround time is ten working days on septic permits.

Mr. Tucker asked if the back of the field had a setback or easement line. Ms. McGetrick stated it was within the 25' setback. Mr. Curtis had a question on adjusting the lot line and asked how close the lot line was to the building. Mr. Platz stated that it was as much room as he could give to get the 10' setback from the existing septic field. It was either give the setback from the existing building or give the setback from the existing septic field and he chose the septic with the 10' given as he had found that to be more pertinent. Mr. Curtis stated that he too found it pertinent but if the parcel gets sold and the building is there, that is going to create a problem down the road. Mr. Platz explained that it's not really a front setback because it's on the side of the building. Chairman Gurel asked if there was 10' between the building and the property line. Mr. Platz stated there or 10' between the edge of the septic field and the proposed property. Chairman Gurel asked if there was a separate request for a variance to the setback. Ms. McGetrick stated that there was not and believes that the county does not require it. A 10' side setback is suggested on tract land but the county does not require it.

Mr. Curtis asked about the adjacent property to the west and stated that the driveway looks pretty close to the property as well and wanted to know how that figured into things. Mr. Platz stated that it was their understanding that they could not get access so there was nothing they could do and that it was owned by Mr. King and they could not access from that drive to the property. Mr. Curtis clarified that the edge of that drive is Advanced Builders property line. Mr. Platz agreed. Mr. Ryan stated that we do have a 10' setback rule but that it was for subdivisions and this was commercial. Mr. Curtis asked what the hardship was for the waiver request. Mr. Platz stated that it was the power line that runs through it. Mr. Ryan stated that technically if you wanted to tie a hardship to anything it has to be a variance. The Board can choose to do this but they do not have to make that connection.

There was no Public Comment.

Mr. Curtis motioned to grant the two waivers the applicant has requested a waiver from the parking buffer requirements. The applicant has requested a waiver for three (3) required parking spaces. Mr. Cole seconded the motion. Motion was carried 7-0-0.

Mr. Cole motioned to approve the project as submitted with the three stipulations recommended by staff.

- The applicant shall submit approval from the Health Department for use of the current septic system or an alternative acceptable to the Health Department.
- The applicant revises the submitted site plan and tract split sheet by adding signature lines for notary and property owner.
- The applicant shall deed an access easement to Hwy 12, for Tract A from Tract B.

Mr. Curtis seconded the motion.

The motion carried 7-0-0. Mr. Ryan stated that the access easement isn't technically from Highway 12 it's a road that is off Highway 12 that connects A and B, so Highway 12 should be struck and remain from Tract A to Tract B. Also the access easement should be identified on the site plan specifically when it's revised.

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## TECHNICAL ADVISORY COMMITTEE

### 1. Call to Order:

### 2. Old Business: None

### 3. New Business:

#### A. **Broadway Construction, LSD #12-191-, JP District 13, 21272 Hwy 16, Siloam Springs, AR, 72716.**

**Represented by:** Katy Gunnerman of Broadway Construction (Designer) 21272 Highway 16, Siloam Springs, AR. And Mr. Jones of Broadway Construction (Owner) 3161 Birch Place, Springdale, AR.

The applicant, Broadway Contracting, is proposing to build a of 11,250 sq. ft. storage and potential office building to be used as a personal storage facility housing tractors, boats, and horse equipment. The building is anticipated to be used by Broadway Contracting for the storage of construction materials. The applicant has indicated that the building will eventually contain office space for up to eight (8) employees to be added at a later date.

Staff presented their report and stated that the applicant may also wish to apply for a waiver from the parking buffer requirements. The applicant should also revise the site plan based on staff comments and provide detailed information on parking at the site.

Mr. Curtis asked for clarification in regard to if the building was right on the tract line. Ms. Katy Gunneman clarified that it is actually five to eight feet off the property line.

Mr. Gurel stated they would need at least ten parking spaces. Ms. McGetrick stated that they have more than enough parking spaces that it only needed to be indicated.

Mr. Gurel asked if this was a completely rural area and if it was in view of any other homes. The applicant stated that it was rural and not in view of any homes. Mr. Curtis stated that it looks like it is sitting on top of a hill and the access road that is beside it is it the road that goes to all the houses. The applicant stated that it is on top of a hill but that it sits completely flat, and also that it is the road that leads to all the houses but that they are not abutting this particular parcel.

Chairman Gurel asked the applicant if adjacent property owners had been notified. Ms. Gunneman stated that they had.

Chairman Gurel asked who owns the property to the west (he believed it was Burnhorn.) Ms. Gunnerman said that she thinks it now belongs to the Carg's out of Wisconsin and that the three buildings that are there include a house, a garage that had been converted into a house,

and that the third building was a garage that had been converted into a loft. She stated that they were all vacant and were being neglected, and that no one wants to buy it.

Chairman Gurel asked staff if this was a subdivision. Mr. Ryan stated no that it is a side lot line.

Ms. Gunneman said that it would be for personal use for storage but later would be for commercial use as they might put the Broadway Contracting Office there. It would house the accounting department and the various project managers.

Mr. Curtis asked Ms. Gunnerman what her role is in Broadway Contracting. Ms. Gunnerman explained that she does design work for Broadway Contracting.

Chairman Gurel asked the applicant to update the list of items needed by staff and return for the 06/20/2012 Planning Board Meeting.

**B. Area Storage, LSD #12-193, JP District 1, Highway 12 East & Pollock Road, Prairie Creek, AR. 72756.**

**Represented by:** David Platz (Surveyor) with WR Consulting Bentonville, AR. and David Morris (Owner) 21797 Ridgeview Lane, Rogers, AR, 72756

The applicant proposes to build a boat and mini storage facility on a newly proposed tract of 6.56 acres. This tract has not been legally separated or defined by the applicant as separate from the parent tract 18-03350-000. The storage facility, as proposed, will contain six (6) storage buildings. The buildings are 25 ft. from the property line and 64 ft. from the right-of-way center line. The buildings are neighbored by a detention pond and then Pollock Road to the East. The buildings, which total 38,326 sq. ft., vary in square footage.

Staff presented their report and noted in regard to operations on site;

- The applicant should indicate the types and lengths of boats on site.
- The applicant should indicate the type of storage building, for example will the building be opened or closed.
- The applicant should indicate which units will be boat storage and which will be mini storage.
- In regard to site access; the applicant should provide a statement indicating agreement from County Roads Department and AHD indicating approval of proposed access to Highway 12 and Pollock Road.
- The applicant should indicate whether or not the construction entrance at Pollock Road will create any increase in traffic to Highway 12 and provide statement indicating approval of use as a construction entrance from the County Roads Department.
- The applicant should indicate that the construction entrance will be closed upon completion of construction.
- Staff asked that the applicant to provide a statement indicating the proposed method of disposal of solid waste on site.
- Please inform Beaver Lake FD that there will be a gate blocking access to the site.
- Indicate whether or not the gate has a keypad.

- Please provide a statement indicating that the Beaver Lake FD will have access to the property and any gate codes or keys.
- Please provide statement from Carroll Electric indicating service agreement.
- The applicant should indicate if any outlets will be provided in storage units.
- The applicant should provide greater detail in regards to storm water runoff; and address flow into the detention pond.
- The applicant should indicate the surface material of the drainage hollow. THE Board may wish to procure an independent engineering review of plan and report regarding storm water facilities.

Mr. David Morris stated that he owns Area Lake Boat and Mini Storage which is 300 feet east across Pollack Road from the proposed new site and has over 100 units. Some are as small as 5'x10' and as large as 14'x50'. He stated that you really can't designate the 14x50 for use by a 45' RV, and that some people have large homes that they sell and they use the 14x50 sizes to put their furniture in. The modern boats are larger and typically taller than the boats ten years ago, and federal law determines that one hundred and two inches is the maximum width that the boat can go down the road without a permit. Mr. Morris stated that they are trying to go to storage units that would be capable of handling the more modern boat right now, and they are turning away people with these boats right now because they are too tall so they see the need and the demand and are well aware of the maneuvering that is needed. He will do whatever is necessary to meet the Board's requirements.

Chairman Gurel asked for clarification as to who owns the property, he stated that he has an affidavit from the property owner that he is willing to sell the property.

Mr. Morris stated that he is under contract right now for the property and sale is contingent on approval.

Mrs. Leyva asked for clarification if the applicant wants to reroute a creek and what that entails. Mr. Morris said it was mainly a drainage ditch and is dry most of the time and when it rains significantly it gets water. He stated they will straighten it out some and that it really was not a creek, it's more of a drainage ditch. Mrs. Leyva stated that on the drainage report that it is a creek and is called Bear Creek. Mr. Pate asked the applicant if that area flooded during the severe rain. Mr. Morris stated that he has a fence around his property and the elevation of the proposed site is about at the top of his fence. Mr. Tucker asked the applicant if the firm map was showing in the floodplain. Mr. Morris said yes that it is showing. Mr. Curtis expressed concern for the applicant rearranging the creek and access to Highway 12. He asked if the boats can get in and out without blocking traffic. He also expressed concern about the applicant trying to put as many buildings as is shown on the site with that small retention pond and the access to that particular building. Mr. Morris stated that square footage is what he sells and that it was going to take a tremendous amount of money to develop this and if he didn't have enough units it simply will not work. There will be enough space to get into each unit. He noted there is probably going to be 80' between the units, its currently showing 60' but the applicant will give it a little more room for that building on the east end. Mr. Curtis asked about the east side and the retention pond. Mr. Morris said that it was a single load building and that there are not double units in there. Mr. Morris stated that there was plenty of room on

Highway 12, that people would be able to maneuver well off the highway. The gate is well off the highway so it shouldn't be a problem.

Chairman Gurel asked how many feet the gate was off of the highway. The applicant stated that it is at seventy five to eighty feet from the edge of the road to the gate.

Mr. Curtis stated he has seen Pollack road covered with water and he used to have a unit in Mr. Morris's storage facility and it had water in it because the creek got up so high and the building on the other side of Pollack Road acts as a dam for the creek, so the water is going to hit that building and back up back across Pollack Road. Mr. Morris stated those particular storage units across the road are not his. Mr. Curtis said he knew that but is saying he had a storage unit alongside the applicant's creek. Mr. Morris said that it used to flood there but recently 2 pipes were put in.

Mr. Platz stated that one of the areas they really worked on was the detention pond and the goal was not to add any additional water, so all the work they have done is taking the water down to the detention pond so that whenever there is a ten year flood the water goes on through and that their water was not coming in at the same time. That way they are not adding anything to the creek and by straightening it the water will speed up so they are going to put rip rap in to slow the creek down in several areas. Mr. Tucker asked if the Army Corp of Engineers made a determination on it and considers that a general stream or water body that they have jurisdiction over. Mr. Morris stated he had asked Rick Buck the previous property owner and was told there were no issues there and that he was going to make contact with them and if there were any issues he would let Mr. Morris know. He had not heard back from him on this matter. Mr. Morris stated he called someone he knew at the Corps and asked about different properties he was considering and they were primarily on the north side of the highway and it would be hard to do, especially in the lower flatter areas. Mr. Morris stated that the Army Corp of Engineers felt that on the south side they didn't foresee it as a problem because they don't ever see the lake backing up across Highway 12. Mr. Tucker asked the applicants if they had an official determination. The applicants stated they did not and asked the Board if they had any one they could recommend. Mrs. Elizabeth Bowen stated that there is a regulatory person who is out of Beaver Lake Office on 2nd St. and recommended the applicants give him a call. Mrs. Bowen could not recall the entire name, but felt that his first name is Rocky.

Chairman Gurel asked the applicants if they felt that they could get everything done that was needed by staff. The applicants stated that they felt they would be ready in two weeks for the Public Hearing.

Mr. Ryan asked the Board if they wanted to retain outside engineering review of the storm water report and the storm water facilities depicted on the site plan. Chairman Gurel stated we have a storm water report now, and need to see that to determine if something more was needed. Mr. Ryan stated we could PDF the report and upload it on to Dashboard. Mr. Pate asked who did the drainage report. Mr. Platz stated that Mr. Bill Platz did the report. Mr. Pate stated that if he is a registered engineer then he is a credible person to do that.

Chairman Gurel asked the applicants if the retention pond was connected to the stream somehow. He asked if the retention pond was only going to collect the water from the Storage facility. Mr. Platz stated it is only for the storage facility and then they were going to slowly release water into the creek.

Ms. McGetrick provided the Board with a copy of the Storm Water Drainage report to review. Mr. Gurel asked the applicant if they redesigned the creek at his facility nearby. . Mr. Morris stated it was already done when he purchased it.

Chairman Gurel asked if the drainage crosses under Highway 12. Mr. Curtis stated that it does cross under the highway and empties into the lake behind the boat dock. It is the waterway that forms that bay.

Chairman Gurel stated that as long as a licensed engineer stamps on the re-engineering of the creek he didn't see where the Board would need anything else on that. Chairman Gurel asked the staff if they were recommending this. Mr. Ryan stated staff recommends a stamped engineer approval. Mr. Curtis stated he would feel much more comfortable if a 2<sup>nd</sup> pair of eyes took a look at it. Mr. Ryan suggested the County retain a 2<sup>nd</sup> opinion with the applicant to assume the expense. Mr. Morris stated no that he had spent enough money and that he called engineers from the Planning Department list that was provided to him and felt that this request was unfair. Mr. Ryan stated that they have the ability to do this in house and estimate that it would run from \$100-\$300 for one and a half hours to two hours of review and that it is not a significant review. Mr. Curtis reminded everyone that he is just one person on the board and that this would be enough to make him feel comfortable. Mr. Pate stated that the engineer has an error and omissions insurance and when he puts his stamp on a design and it fails, he is responsible and is liable for the cost of making the correction. The engineer has insurance for that purpose. He said that it is also difficult to have one consulting engineer review another consulting engineers work because they are in other arenas, competitors, making it an awkward situation. The engineer who prepared the report should be asked to take a second look and make sure everything is correct. Mr. Tucker asked if it would be fair to ask the engineer who prepared this report to include a statement about the culvert on Pollack Road rather than just the discharge from the detention base. Chairman Gurel stated that the drainage report should include something about the adequacy of the culvert downstream. Mr. Curtis stated that the only other culvert on that stretch is under Highway 12. Mr. Morris stated that there is another culvert under Navajo. Mr. Pate asked the applicants to go back to the engineer and review and address the culverts and to come back prepared in two weeks because it will come back up.

Chairman Gurel asked the applicants to return for the 06/20/2012 Planning Board Meeting.

**Palm City Motor Sports, LSD #12-192, JP District 6, 14777 E. Hwy 62, Garfield, AR 72732.**

**Represented by:** Dirk Thibodaux with Gray Rock Consulting, (Representing the owner) and Jim Allen 1620 Highway 12 East Rogers, AR



The applicant is seeking to operate an already existing vintage car dealership, Palm City Motor Sports, at 14777 East Highway 62. The applicant proposes to use a 2450 sq. ft. metal building, currently on parcel 18-04285-001, to house the car dealership showroom and a small office. The applicant will also use the existing parking lot on parcel 18-04285-001 to display cars for sale. The applicant proposes to use an empty concrete lot on parcel 18-04262-000 to display additional cars for sale as well as proposed parking for customers of the dealership.

Staff presented their report and stated that the applicant should address plan deficiencies.

- This shall include providing an existing conditions plan (pre-widening) and a post widening layout so that the Board can approve both simultaneously.
- The applicant should address traffic issues, if any, which may arise during the demolition and construction of the parking lots on site.
- The applicant should provide Arkansas Highway Department approval of AR Hwy 62 access.
- The applicant should provide a statement from the Health Department indicating approval of use, as a public and employee restroom, for the bathroom on the neighboring property housing the construction offices.
- The Board may wish to consider this as a temporary measure and require that the applicant provide plans for a holding tank as a stipulation of future approval which the Health Department has indicated is a potential alternative.

Ms. Elizabeth Bowen asked the applicants if the Highway Department has purchased the property yet. Mr. Jim Allen stated that AHTD came out and surveyed it; he wasn't certain where the line is they did mark it. The flags on the ground are in disarray right now. Mr. Dirk Thibodaux stated he doesn't think the Highway Department has purchased it yet. Mr. Thibodaux explained the drawing with the lines, the line with the jog in it is the property the way it is right now and the line without the jog is the property in the future. He also explained the right-of-way lines. Chairman Gurel asked what the metal building is being used for now. Mr. Allen stated it is a garage, a very nice garage, and that it was like a showcase. Mr. Thibodaux said it was not being used as a business right now. Mr. Curtis asked how long the property been owned by the person proposing the car dealership. Mr. Thibodaux said that Mr. Bob Saylor owns the property and has owned it all along and he is not proposing the dealership. Mr. Allen is proposing the dealership. Mr. Allen stated he was open for just eight days and Benton County notified them that they didn't have their permit and that they were in violation. Mr. Allen stated he did not know that he needed that and they promptly took down all the signs and removed the cars in the lot. Mr. Allen said that he did not want to be in violation of anything. Mr. Curtis asked the applicants if Mr. Saylor is the one who wanted to put the night club up and the gas tanks up. Mr. Allen stated that Mr. Saylor wanted to open a restaurant there several years ago. Mr. Curtis asked if Mr. Saylor is the one who put the gas pumps there and is that is all part of his décor. Mr. Allen said yes that it was all part of Mr. Saylor's decorations. Mr. Tucker asked the applicants if there was any capacity to add a toilet to that facility. Mr. Allen answered that he would probably add a holding tank. Mr. Thibodaux stated that it is not actually being added to the showroom. The restaurant facility next door actually has the restrooms. A holding tank can be added here. But they were not adding a restroom to the metal building.

Mr. Cole asked if the notices have gone out to adjacent property owners. Mr. Thibodaux said that the notifications had gone out. Chairman Gurel asked the applicants to address the concerns of the staff and return to the next Planning Board Hearing of 6/20/2012.

Chairman Gurel stated that while under the Public Hearing he would like to tell the staff to take a look at the other automotive businesses provided by Downtown Towing. Mr. Ryan said he would have been happy to have taken a look at them had the applicants provided him with the information previous to the meeting and will definitely review them now.

#### **4. Staff Updates: LSD Amendment Procedures**

Ms. McGetrick stated she has a question for the Board concerning Beaver Lake Car Wash. The project was granted LSD approval in 2002. Staff has been contacted by a gentleman who would like to put a snow cone stand on the property and needed guidance from the Board on amendment procedures for Large Scale Developments. Ms. McGetrick stated it is seasonal and not a permanent building and was unclear as to how to have him amend his LSD. Her concerns include the need for a technical review and a public hearing, and the need for a full large scale development application. She asked if the applicant would need a vendor permit from the Health Department. Mr. Ryan asked if they wanted to go through a full month meeting cycle or if the board wanted to combine it into a single public hearing meeting. Staff could provide the board with a full technical review and take care of the public hearing at the same time. Mr. Ryan stated that it isn't required. Mr. Curtis stated he would like to do that. Mrs. Leyva asked staff to find out regarding the disposal of the waste because that is on the ADEQ permit system as commercial waste, it is considered sewage by the Health Department and most car washes cannot accept sewage per their permit so there may be an issue there and also if the applicant has been approved by the Health Department.

Mr. Gurel explained the Greenstone Estates case may go to Centerton as it is in Centerton's district now and in the past it had been in Benton County's jurisdiction.

Discussion was made by the Planning Board and Staff regarding prompt notifications of any personnel changes within the planning department.

#### **5. Adjournment: 11:45pm**